

Steven L. Beshear
Governor

Leonard K. Peters
Secretary



Environmental Quality Commission

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Scott Smith, Chair, *Lexington*
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Andrew Ernest, *Bowling Green*
Laura Knoth, *Grand Rivers*
Kimberly McCann, *Ashland*
Stephanie McSpirit, *Richmond*
Eugene Zick, *Russellville*

**KENTUCKY ENVIRONMENTAL QUALITY COMMISSION
PUBLIC FORUM**

Meeting Minutes

August 4-5, 2008
14 Reilly Road, Bldg. 6
Frankfort, Kentucky

EQC Commissioners Present

Scott Smith, Chair
Gordon Garner, Vice Chair
Andrew Ernest
Laura Knoth
Kim McCann
Stephanie McSpirit
Eugene Zick

EQC Staff Present

Arnita Gadson, Executive Director
Johnna McHugh, Director of Operations
LaTisha Barnett, Executive Secretary

Speakers/Representatives Present

Secretary Leonard Peters, Energy and Environment Cabinet (EEC)
R. Bruce Scott, Department of Environmental Protection (DEP)
Carl Campbell, Department of Natural Resources (DNR)
John Holiday, Office of the Inspector General (OIG)
Steve Hohmann, Division of Abandoned Mine Lands (DAML)
John Lyons, Division for Air Quality (DAQ)
Aaron Keatley, Division of Compliance Assistance (DCA)
Jeff Cummins, Division of Enforcement (DENF)
Ron Mills, Division of Mine Permits (DMP)
Leah MacSwords, Division of Forestry (DOF)
Sandy Gruzesky, Division of Water (DOW)
Tony Hatton, Division of Waste Management (DWM)
Johnny Greene, Office of Mine Safety and Licensing (OMSL)
Mike Haines, EEC
Ted Withrow, DOW
Don Dott, Nature Preserves Commission
Abby Powell, DOW
Cassandra Jobe, DWM
Mickey McCoy, Martin County

The Environmental Quality Commission (EQC) held its Annual Meeting on Aug. 4-5, 2008, with 18 people in attendance each day. The meeting was called to order on Aug. 4 at 9 a.m.

LaTisha Barnett began the meeting by explaining the contents of the meeting binders provided to the commissioners.

Introductions were made. Scott Smith, Commissioner Chair, introduced Secretary Leonard Peters who addressed the recent changes within the cabinet. Secretary Peters became the official Secretary of the Energy and Environment Cabinet on June 16, 2008. There are three departments within the cabinet: the Department for Environmental Protection, the Department for Natural Resources and the Department of Energy Development and Independence, which will include the former Governor's Office of Energy Policy.

Secretary Peters informed those in attendance that a comprehensive energy action plan is being prepared at the request of Gov. Beshear and is scheduled to be completed in September 2008. Some issues that are being considered are:

- How to effectively and responsibly use coal.
- How to manage carbon issues in Kentucky.
- How to assist low income users.

There are 3 high level strategies to combat these issues:

- Renewable portfolio standards
- Energy efficiency resource standards
- Pushing alternative energy, especially wind, solar and biomass

Secretary Peters hopes that after Governor Beshear approves the plan, arrangements will be made to travel the state to explain it to the public.

Bruce Scott presented the commission with briefing binders and gave updates on the current issues within the Department for Environmental Protection. The issues included the upcoming office move, FY2009-2010 budget, reorganization, retirement and leadership changes, regulation revision, permit backlog, IT initiatives, and DEP's Strategic Plan, which was presented to the commissioners. The plan is available on the DEP's Web site.

Carl Campbell spoke to the commission about in-house training issues within DNR, flyrock problems, mine safety issues, mountaintop removal, and IT innovations.

John Holiday spoke to the commission about the work of the Inspector General's office. OIG's mandate is to prevent fraud and abuse within state government.



Kentucky's OIG is unique in that in addition to workplace issues, investigations include environmental complaints.

After a break for lunch, the commission reconvened with several division directors from DEP and DNR.

Steve Hohmann said the Abandoned Mine Lands program is 100% federally funded and, therefore, has no staffing/funding issues. The office works with mining and health and safety problems that occurred prior to 1982.

John Lyons' report to the commission concentrated on budget and personnel issues in the Division for Air Quality. DAQ cannot raise fees, as the Title V fees are already close to EPA's published annual presumptive fee. With the new 8 hour ozone standard, 17 counties are in non-attainment. This has severe economic development implications as major facilities will not locate in areas that are currently in non-attainment. The CAIR rule was vacated on July 11, 2008.

Aaron Keatley's report stated that the Division of Compliance Assistance is not mandated by federal or state law. The current 20 employees certify wastewater and drinking water operators, deal with brownfields, run the Ky EXCEL program and assist in compliance within DEP.

Jeff Cummins reported that the Division of Enforcement has no case backlog and has a young staff that is still learning their responsibilities. Their largest concern at present is the budget. They may lose as many as 6 staff members. Money generated by fines goes to the Kentucky Heritage Land Conservation Fund, not back into DENF.

Ron Mills, the new director of the Division of Mine Permits stated that the number of permits submitted is on the rise, and the DMP is currently recommending electronic submissions. They are having to reallocate some resources because of budgetary and staffing issues.

Leah MacSwords spoke about the Division of Forestry, whose primary responsibility is the health and welfare of the 11.9 million acres of forested land in Kentucky. She thanked the EQC for its help in creating the fire prevention kits last year. Fighting wildland fires is considered a "necessary government expense". After the monies budgeted for DOF are spent, all other fire-fighting activities are paid from the general fund. In addition to firefighting, the DOF also promotes the use of trees as an alternative energy source. DOF makes every effort to track and prevent forest pests and diseases, manage the state-owned forests, and inspect tree farms.

Sandy Gruzesky reported on the Division of Water. Although the official personnel cap is 263 employees, the current budget only supports 245. The DOW continues to work on backlog issues by switching to electronic permits and

re-evaluating the permit process. The Division is also attempting to raise fees, as the current fees do not pay for the permitting process. Due to the reorganization of the cabinet, DOW lost 3 branches and 3 sections. The physical move to Fair Oaks will help the reorganization become more efficient.

Tony Hatton presented updates on the Division of Waste Management, which has 2 primary permitting programs, the TSD facilities and solid waste facilities. There are 3 funding streams for DWM: federal, restricted, and general. The Division has had to move positions around because some branches now are funded entirely from the general fund. Hatton asks the commission to help by pushing to restore general fund money in 2011-2012.

Johnny Greene of the Office of Mine Safety and Licensing provided the Commission with an overview of his office. OMSL regulates all the coal mining operations in Kentucky (480-500 currently). Their current employee cap of 157 will increase to 190 next year with the new legislative requirements. Their office inspects coal mines, certifies miners and provides mine rescue coverage for underground mines. Kentucky is the only state that does this.

The meeting was adjourned for the day at 4:24 p.m.

The meeting re-convened on August 5, 2008. Commissioner Ernest moved to accept the minutes of the May 28 meeting with Commissioner McSpirit seconding. The minutes were approved unanimously without changes.

The Commission discussed writing a letter to Secretary Peters to express their appreciation for the time he dedicated to the meeting and request that a copy of the energy plan be forwarded to the EQC upon its completion. The letter will include EQC's volunteer efforts to assist in the outreach process of the plan.

The first item discussed for the day was emergency action plans for coal waste impoundments. Commissioner McSpirit expressed a desire for EQC to write a letter of support or a resolution that would require emergency action plans (EAPs) to be written for all communities that are located below a high hazard dam or coal waste impoundment.

Mickey McCoy, a citizen of Martin County, urged the EQC to make emergency action plans a priority for 2008-2009. He reported on the Martin County coal spill that occurred Oct. 11, 2000. He stated that the people of the coal communities would like a "meeting of the minds" between the emergency people of the valleys and the hills to come together to formulate a safety plan. He feels that this is a safety issue that should be a "no brainer." He and the commissioners discussed a bill that was taken up and not passed in the legislature this year.

Commissioner Smith suggested that the commission get a copy of the MSHA requirements to see what they suggest an EAP would include. Commissioner



Knoth is concerned that private homeowners and municipalities would have to pay consultants for preparation of an EAP. Commissioner McSpirit stated that she would send out packets of EAP-related information electronically. The EQC feels that it should focus on coal waste impoundments because of the valid safety issues included with this problem. Commissioner Ernest moved that the EQC continue to look into this issue. Commissioner Knoth seconded, and the motion passed unanimously. Commission Smith and Executive Director Gadson will work with the Cabinet and bring discussion back to the next meeting.

Executive Director Gadson presented an update on the Mayor's Summit. The summit is scheduled for Oct. 6 from 1:00 to 4:00 p.m. in conjunction with the Governor's Conference on the Environment at the Lexington Convention Center. The cost to EQC is \$1000. The Secretary and Governor have both agreed to speak. The commissioners asked Commissioner Zick, mayor of Russellville, to speak also. The EQC will develop an action agenda from the formal discussions to include the results from the Mayors' survey, to emphasize issues of concern from the communities of the Commonwealth. Gadson will put together a concept document regarding the goals of the summit.

Mike Haines provided the commission with valuable information about the Open Meetings Act. According to Haines, any conversation among a quorum of members *where decisions are made* has to be a public meeting. Conference calls for educating the commission members are allowed, as long as no decisions are made. The commission reviewed EQC's current public notice procedures for meetings. Everything that comes out of the commission (letters, recommendations, resolutions, etc.) requires a vote.

Haines then discussed the 3.25 million dollar Martin County Coal settlement. The penalties were paid to the Department for Surface Mining, for surface mining violations, Department for Environmental Protection, for water violations, and a sum for natural resource damages. The natural resource damage money (1 million dollars) was put into an escrow account with the cabinet secretary as the trustee. This account was taken away in this year's budget bill and assigned to the Division of Forestry. It has to be used by the settlement's agreed orders, which means that it must be spent in the area (not necessarily in the county). According to Haines, the cabinet has the authority to look at EAPs with regard to mining companies.

Ted Withrow, the basin coordinator for the Big and Little Sandy, spoke about the Martin County Coal settlement money. He believes that the money needs to be spent according to the plans that are currently in place. The commissioners wanted to know the status of the money and the plan for dispersing the money.

Commissioner McCann moved that Commissioner McSpirit speak with Leah MacSwords to find out the plan for the money, so that it can be discussed by the

Commission. This motion was seconded by Commissioner Knoth and passed unanimously.

Don Dott spoke to the commission about the Adventure Tourism initiative. He was recently at a meeting with the Lt. Governor and an ATV group. The group would like to have the use of more public lands for ATV trails. He suggested that the EQC have a roundtable similar to the one hosted in 2002 at Pine Mountain. This roundtable should include a discussion of who wants to travel to Kentucky and why. Possible invitees would include the public, area development districts, legislative leaders, tourism groups, etc. Withrow suggested that ATV trails might be a good beneficial reuse for mountaintop removal sites.

The commissioners discussed that this initiative should include the Lt. Governor, First Lady, EEC, and the former Commerce Cabinet, among others. The commissioners decided to include adventure tourism issues in the survey for the mayor's summit.

Commissioner Knoth moved that Executive Director Gadson attempt to engage Sec. Peters on this issue and to try to get involvement from the Tourism, Arts and Heritage Cabinet. This motion was seconded by Commissioner McCann and passed unanimously.

Tentative meeting dates for the next fiscal year were decided.

- September 25, 2008 – 3pm
- November 18, 2008 – 3pm
- January 29, 2009 – 3pm
- June 2, 2009 – all day with evening

Executive Director Gadson will look into videoconferencing with DOT and LRC.

Commissioner McCann made a motion to accept these dates presently but to get a consensus via e-mail if dates or times are not available. Commissioner Ernest seconded the motion, and it was accepted unanimously.

In addition to those that have been previously discussed, the following meeting topics were presented:

- Mercury (tentatively November)
- Mountaintop removal follow-up (tentatively January)
- DOW Stormwater and municipal permits (tentatively every meeting)
- Energy Plan
- Emergency Action Plans (tentatively September)
- Martin County Coal NRD money (tentatively September)

Public comments should be available through pre-registration.

The commission then began to discuss Division of Water and Division of Waste Management regulations.

Commissioner Smith is concerned that, in regards to 401 KAR 9:010, comments are being collected. Concern was expressed on how they are handled, and what is done once the response is given. Commissioner Ernest moved to approve the regulation. Commissioner McSpirit seconded the motion, and it was passed unanimously.

Commissioner Smith recommended deferring discussion regarding 401 KAR 9:020 until legal issues are completed. Commissioner Knoth agreed and stated that there are legal issues with the DOW charging fees for certification. Commissioner Ernest moved to table further discussion and Commissioner McCann seconded the motion. It was passed unanimously.

According to Cassandra Jobe, all changes in the DWM regulations are paperwork related and complying with federal regulations. Commissioner McSpirit moved to approve all 12 regulations, and Commissioner Ernest seconded the motion. It was passed unanimously.

A letter was drafted to send to Secretary Peters regarding the energy plan. Commissioner McCann made a motion to accept the letter as it was drafted. The motion was seconded by Commissioner McSpirit and unanimously passed.

The commission also requested a report on federal regulations and legislation that apply to environmental issues.

A motion to adjourn the meeting was made by Commissioner Ernest and seconded by Commissioner Smith. The motion was passed unanimously, and the forum was adjourned at 12:00 p.m.

Signed,

Scott Smith, EQC Chair
September 25, 2008

